

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

IN RE: ERN REYNOLDS,) **CHAPTER 7**
Debtor(s).)
) **CASE NO. 09-71964**

IN RE: ERN REYNOLDS,)
Debtor)
)
v.)
)
WELLS FARGO BANK, N.A.,)
Respondent)
)
and)
)
CHARLES R. ALLEN, JR., TRUSTEE)
)
v.)
)
REYNOLDS LIVING TRUST)
ERN REYNOLDS, TRUSTEE, pro se)
Defendant-Intervenor)
)
v.)
)
ATTORNEY LIABILITY)
PROTECTION SOCIETY, INC., A)
MONTANA CORP. a/k/a ALPS)
Crossclaim Defendant¹)

**DECISION AND ORDER
DENYING MOTION FOR JUDGMENT
(Docket Entry No. 81)**

The matter before the Court is the motion filed by Ern Reynolds, Trustee (the “Trustee”) of the Reynolds Living Trust, acting pro se, on February 22, 2011 as docket entry no. 81 and which this Court has termed “the Injunction Motion.” The Motion proposes that it be argued on April 11, 2011; however it was mentioned by its proponent during a hearing before the Court on February 22, 2011 upon the same proponent’s Amended Motion for Entry of Order

¹ This is the caption which has been utilized by the pro se proponent of the Motion.

(docket entry no. 80). At the conclusion of that hearing the Court advised that it would review the Intervention Motion prior to ruling upon the motion docketed as entry no. 80. The Court has now had an opportunity to do so and has, by a separate order, denied such motion. Although it is not this Court's normal practice to rule upon a motion in advance of any argument desired by the proponent, it has determined that in the very unusual circumstances presented here oral argument upon the Injunction Motion will not be helpful in assisting in the consideration of such motion and further that the ends of justice will be served best by ruling promptly upon such motion so that the Trustee may decide sooner rather than later how he wishes to proceed in light of such ruling. Its reasons for that determination are as follows:

1. The observations and conclusions of law set forth in this Court's contemporaneous Decision and Order denying and dismissing the "Intervention Motion" designated as docket entry no. 63 are hereby incorporated by reference.

2. The Injunction Motion advances the contention that by virtue of the language contained in Bankruptcy Rule 4008(a), which authorizes any bankruptcy court "at any time and in its discretion, [to] enlarge the time to file a reaffirmation agreement," the Court may authorize the filing of a reaffirmation agreement subsequent to a discharge having been granted. In support of that contention, such motion quotes certain language from the 2008 Advisory Committee Note to this Rule. A review of that Note in its entirety, however, makes clear that such authority must be exercised prior to the entry of a discharge, which is consistent with this Court's ruling set forth in its Memorandum Decision docketed as entry no. 68. No request for any such enlargement was ever made prior to the entry of the discharge order in this case. That ruling is final and will not be revisited absent some demonstration of cause pursuant to

Bankruptcy Rule 9024, no basis for which has been put forward by the proponent or independently observed by the Court.

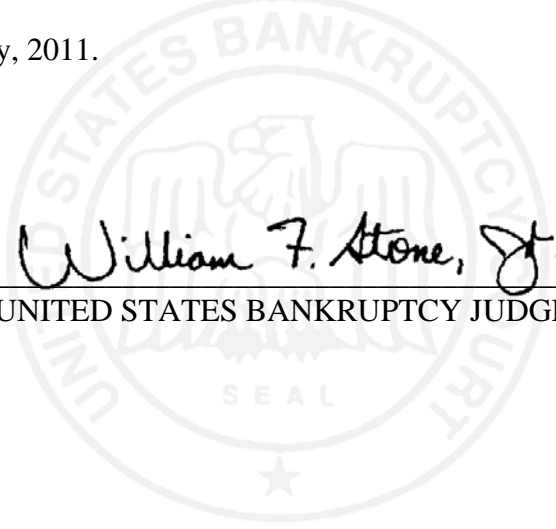
3. Although the Injunction Motion contains thirty nine numbered paragraphs, all of which the Court has carefully read, the material claims for relief which it advances, in addition to an extension of time to file a reaffirmation agreement, are (i) entry of an order requiring the professional liability carrier for Debtor's bankruptcy counsel to post a bond to cover amounts which the Debtor anticipates having to pay to cure the existing default in payments on the mortgage indebtedness owing to Wells Fargo Bank, N.A., and (ii) an injunction against Wells Fargo proceeding to foreclosure until the claim against the professional liability carrier has been adjudicated. To these ends the Trustee requests entry of a proposed Interlocutory Order pending the April 11 hearing on the Intervention Motion and the Injunction Motion. The Court need not address for the purpose of this ruling the basic question of the standing of the Trustee of the Reynolds Living Trust to advance a claim for professional malpractice allegedly committed in representing the Debtor individually in this case. It concludes, for the reasons noted in this Court's Decision and Order referenced in numbered paragraph 1 above, that these claims ought to be advanced, if factually and legally soundly based, in one or more adversary proceedings against Wells Fargo and the insurer, not by means of a motion filed pursuant to Bankruptcy Rule 9014.

Accordingly, it is ADJUDGED and ORDERED that the Injunction Motion, being that motion docketed in this case as docket entry no. 81, is DENIED and DISMISSED because (i) much of the relief it seeks to obtain has already been rendered moot by this Court's February 10, 2011 Memorandum Decision and Order, and (ii) the remaining relief sought in such motion

is not available pursuant to a Rule 9014 motion and ought to be advanced, if at all, in an adversary proceeding pursuant to Part VII of the Bankruptcy Rules. This ruling shall not be deemed to constitute any determination as to the jurisdiction of this Court to entertain one or more adversary proceedings advancing the claims for relief set forth in the Injunction Motion or whether such claims are “core” or “non-core” bankruptcy proceedings within the provisions of 28 U.S.C. § 157(b)(2).

The Clerk is directed to send a copy of this Order to each of the following: Ern Reynolds, Trustee of the Reynolds Living Trust; the Debtor; counsel for the Debtor; the case trustee; the Office of the United States Trustee; and Attorney Liability Protection Society, Inc.

Enter this 25th day of February, 2011.

The seal of the United States Bankruptcy Court is visible in the background, featuring an eagle with wings spread, perched on a shield, with the words "UNITED STATES BANKRUPTCY COURT" and "SEAL" around it.
William F. Stone, Jr.
UNITED STATES BANKRUPTCY JUDGE